trial on the 10th without the advocate being aware of the fact of trial on that date. On the same date the case was transferred to the 2nd District Court, but counsel for the appellant could not appear, he being engaged in a preliminary inquiry in another Court, and not knowing that either the case was fixed for trial or that it was to be transferred.

Application for adjournment was refused. The accused appealed.

N. N. Leicester for the appellant.

A. V. Winslow (D. P. P.) for the respondent.

The following directions were made :—

Gordon Smith J. (November 18) : — On the principle that Justice should not only be done but that such is manifestly done, I thought that there should be a new trial in this case.

The case had been transferred to another Court and the accused had instructed on the 8th October an Advocate to appear for him and the case came on for trial on the 10th without the Advocate being aware of the fact of trial on that date.

And, it is a very grave charge.

Murray-Aynsley C.J. (November 23) : — The previous directions issued when I was absent from the Colony must all be taken as being subject to the proviso that an accused person has a reasonable opportunity of obtaining the services of counsel. Any trial where the accused was deprived of such a reasonable opportunity will of necessity be regarded as mistrial. To secure this the day for hearing should not be fixed at too early a date.

Re-trial ordered.

PARAMASIVAN & ORS. v. PUBLIC PROSECUTOR

[A. Cr. J. (Laville J.) January 27, 1949]

[Johore Bahru — Criminal Appeal No. 20 of 1948]

Penal Code, ss. 323 and 352 — Charge of rioting amended to one of voluntarily causing hurt — Power of Appeal Court to alter finding of guilty of voluntarily causing hurt to finding of guilty of rioting, if the facts so warrant — Summary Trial — Offences in same transaction — Criminal Procedure Code (Cap. 6), ss. 155, 166, 167, 173, 179 and 421.

In this case the appellants were originally charged with rioting. At the end of the prosecution case the Court amended the charge against the accused to one of voluntarily causing hurt upon which latter charge the accused were ultimately convicted. On appeal it appeared that there was not sufficient evidence of voluntarily causing hurt against each of the accused, but there was evidence of rioting.

Held: (1) it was open to the Appeal Court to reverse a finding which amounts to an acquittal and substitute therefor a finding of conviction if the facts so warrant and the acquittal was based on wrong grounds; (2) in this case the finding of guilty of voluntarily causing hurt should be altered to a finding of guilty of rioting under s. 147 of the Penal Code.

Case referred to :—

(1) *Queen-Empress v. Jabanulla & Anor.* I.L.R. 23 Cal. 975.

MAGISTRATE'S CRIMINAL APPEAL.

Mark Morrison for the appellant.

W. M. McCall (Federal Counsel) for the respondent.

Laville J. : — Accused in this case were charged with rioting on 1st February 1948 at Bukit Chagar, Johore Bahru. At the end of the prosecution case the Court amended the charge against the accused to one of voluntarily causing hurt to Sinniah and Muthu, and the case proceeded on the basis of that charge.

Counsel for accused made no objection either to the amendment of the charge or to the fact that the accused were not asked to plead thereto, and after they had given evidence and called witnesses the 5 accused now appealing were convicted on the amended charge and the last 4 appellants were bound over to keep the peace for 3 months in a sum of $50. The first appellant was treated as a youthful offender and admonished and discharged.

Against this sentence the accused now appeal on the following grounds :—

(1) that the appellants were never charged with the offence for which they were convicted;

(2) that the charge should have been in duplicate, i.e. causing hurt to Sinniah, and a second charge of causing hurt to Muthu;

(3) that the necessary particulars were not given which would enable the defence to meet the charge; and

(4) that causing hurt to Sinniah and Muthu formed no part of the original charge and did not fall within the ambit of s. 166 or s. 167, Cr.P.C.

It is clear from the record that after amending the charge, under the provisions of section 173 (h) Criminal Procedure Code, the trial Magistrate omitted the procedure laid down by section 173 (i) of the Code. It was quite clear, however, from the evidence taken already in the hearing of the accused that they each must have known that they were now charged with striking and causing hurt to Sinniah and Muthu severally, and that they were not prejudiced in their defence by failure to ask them to plead to the charge. The action of the Magistrate, though irregular, did not amount to an illegality and in view of section 421 Criminal Procedure Code the decision arrived at should not be upset on that ground.

The second ground of appeal also cannot prevail. Section 179 of the Criminal Procedure Code covers the situation. Here the accused are charged with separate offences committed in the same transaction and may therefore be charged and tried together. There is no ground for thinking that any of the accused was prejudiced in any way by the joinder of these two charges.

There is no substance in the 3rd ground of appeal. It is quite clear from the evidence given by the prosecution what the particulars were each of the accused had to meet.

The 4th ground too must fail in that it was clear from the wording of the original charge that the complaint was one of causing hurt to the men Sinniah and Muthu. It must be conceded that the word "assault" in the original charge must be read under the provisions of section 155 Criminal Procedure Code as having the technical meaning given to it in section 352 Penal Code, but it is also beyond doubt that the evidence disclosed that such an offence must have preceded the actual causing of hurt, and I am also satisfied that at the time of the original charge the word "assault" was understood by the accused in its colloquial sense of causing hurt.

The appeal on the grounds set out must therefore fail.

I am, however, of opinion that on the facts proved by the prosecution evidence a case for voluntarily causing hurt against each of the accused has not been made out. The evidence against each of the accused is not particularised in regard to blows being struck by each of them on the persons of Sinniah and Muthu, but the evidence asserts that all the accused as a body caused hurt to Sinniah and Muthu.

On appeal the whole case and the decisions of the lower Court on all points arising in the case are thrown open for re-examination and amendment if necessary by the Appellate Court.

On the evidence given it is quite clear that all accused formed part of a body of men who assembled at the house of Sinniah and Muthu about 8.30 p.m. and that either prior to that time or after they had so assembled some of that body, over 5 in number, conceived the common intention of using force against Sinniah and Muthu and that to that end they committed mischief and criminal trespass by entering the house in which they were living. This body of men of whom the accused were members then became an unlawful assembly. There is also clear and satisfactory evidence that certain members of this assembly used force or violence.

On that evidence a charge of rioting is clearly established and the learned Magistrate misdirected himself in holding that there was no evidence to support such a charge and in amending it.

The defence of each of the accused was a bare denial which could be given no weight against the prosecution evidence.

It is clear from *Jabanulla's*[1] *case* and subsequent rulings that it is open to an appeal Court to reverse a finding which amounts to acquittal and substitute therefor a finding of conviction if the facts so warrant and the acquittal was based on wrong grounds.

I am of opinion that the proper finding in this case is that each of the accused was guilty of rioting. I therefore dismiss the appeal, but alter the finding to one of guilty of rioting against each of the accused.

As to the sentence I am of the opinion that the riot was not of a serious nature and that the sentence of the lower Court is adequate.

The appeal will be dismissed, but the finding will be altered to one of guilty of rioting under section 147 of the Penal Code and the sentence will be maintained.

Appeal dismissed; Finding altered.

SUNGEI SALAK RUBBER CO. LTD. v. DEPUTY COMMISSIONER OF LABOUR, NEGRI SEMBILAN & MALACCA.

[A. C. J. (Callow J.) July 21, 1948]

[Seremban — Civil Appeal No. 4 of 1948]

Workmen's Compensation Enactment, (Cap. 155), ss. 20(i), 23(iii) and 25(i)(f) — Workmen's Compensation Rules, 1933, rr. 19, 42 — Representation by the Controller of Labour and non-compliance with r. 42 — Death in the course of employment — When a man's employment begins — Civil Procedure Code (Cap. 7), ss. 34, 417 — Public highway.

This was an appeal against the decision of the Commissioner for Workmen's Compensation, Negri Sembilan, on the grounds that the learned Commissioner erred in law in holding (1) that the Deputy Commissioner had power to initiate the proceedings in default of his appointment as next friend of the minor dependents pursuant to r. 42 of the Workmen's Compensation Rules, (2) that the death of the deceased was caused by injury arising out of and in the course of his employment as a workman, (3) that the journey which the deceased, who was under no obligation to attend at the New Labu Estate Factory on the 11th December 1947, was at the time of accident travelling on his Master's business.

Held: (1) even if the omission to obtain the appointment in accordance with r. 42 was held to be a defect or irregularity it did not affect the merits of the case; (2) the deceased was on his way to his place of work for the purpose of working and would not have been at the place where he met his death had it not been for his status as an employee, and his death therefore